UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA ADOLESCENT ADDICTION/PERSONAL INJURY PRODUCTS LIABILITY LITIGATION	MDL No. 3047 Case No.: 4:22-md-03047-YGR-PHK **JOINT LETTER BRIEF REGARDING PARENTAL ATTENDANCE AT PERSONAL INJURY BELLWETHER DEPOSITIONS** Judge: Hon. Yvonne Gonzalez Rogers Magistrate Judge: Hon. Peter H. Kang
This Filing Relates to: *All bellwether cases*	

Dear Judge Kang:

Pursuant to the Court's Standing Order for Discovery in Civil Cases, Plaintiffs and Defendants respectfully submit this joint letter brief regarding whether parental attendance at personal injury bellwether depositions.

Pursuant to the Discovery Standing Order and Civil Local Rule 37-1, the Parties attest that they met and conferred by video conference, email, and correspondence on numerous occasions before filing this brief. On January 6, 2025, lead trial counsel for the Parties involved in the dispute attended the final conferral. Because all lead counsel are not located in the geographic region of the Northern District of California or otherwise located within 100 miles of each other, they met via videoconference. Lead trial counsel have concluded that no agreement or further negotiated resolution can be reached.

The parties will be prepared to address these disputes at the Court's earliest convenience, including at the January 16, 2025, Discovery Management Conference.

Dated: January 14, 2025

Respectfully submitted,

/s/ Megan M. Egli

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ATTESTATION

I, Previn Warren, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

Pursuant to Section H of this Court's Standing Order in Civil Cases, lead counsel for Plaintiffs and each of the Defendants attended the final meet-and-confer on January 6, 2025, which was conducted via a videoconference Zoom meeting, as lead counsel were in attendance from locations across the country more than 100 miles apart.

Dated: January 14, 2025 /s/ *Previn Warren*

Defendants' Position: Following extensive negotiations and motions practice, the Court entered a protocol permitting attendance at depositions of various counsel and "the Parties or the representative of each respective Party." ECF No. 742, at § I.B.1; Order re Appointments of GALs, ECF No. 122, Attachment A (GAL "represent[s] the interests" of minor plaintiff). Plaintiff depositions will involve deeply personal topics—including topics related to Plaintiffs' relationships with parents or guardians, which may be uncomfortable for the Plaintiff to discuss in the presence of their parent—and attendance by other fact witnesses has the potential to inhibit a Plaintiff's candor in those sensitive discussions. Plaintiff S.K.'s request to amend the Court-ordered deposition protocol to permit her parents attendance at her deposition, even though she has reached the age of majority, should be denied.

Defendants are not seeking to prevent attendance by minor Plaintiffs' GALs (*i.e.*, the parents or guardians who have been appointed by the Court to represent them). But consistent with the Deposition Protocol—which supersedes Rules 26 and 30 of the Federal Rules of Civil Procedure on this issue—attendance by parents or guardians in depositions of adult Plaintiffs of full capacity should not be permitted. Plaintiff S.K. reached the age of majority after filing her case, and her GAL's authority automatically terminated on her 18th birthday. *See* Colo. Rev. Stat. 15-14-210(1) ("A guardianship of a minor terminates upon the minor's . . . attainment of majority . . . ."); *id.* § 13-22-101 (persons 18 or older have the capacity to "sue and be sued in any action to the full extent as any other adult person in any of the courts of this state, without the necessity for a guardian ad litem").[1] Plaintiffs over the age of 18 make decisions for themselves, including whether to continue pursuing this litigation. They are allowed to vote and serve in the military. They can sit for a deposition without a parent or guardian by their side. *See also* 2/22/24 DMC Tr. 43:19–24 ("A minor is somebody under 18 . . . I don't think the law is unclear about that."). Indeed, when Defendants presented this issue to Judge Kuhl, the JCCP Plaintiffs informed the court that "[t]he JCCP Plaintiffs are not aware of any potential fact witness that will be attending any nonminor bellwether Plaintiff deposition." 12/13/2024 CMC Statement at 16.

A young adult Plaintiff may be inhibited from providing comprehensive, truthful testimony if the individual about whom they are being asked to testify is present a few seats away in the conference room or on Zoom. Plaintiff S.K.'s records indicate that her mother's dismissive attitude toward her, combined with her mother's focus on food and dieting, negatively impacted S.K.'s mental health by increasing her anxiety and contributing to her eating disorder. S.K.'s records also indicate that pressure from her parents to excel overwhelmed her and caused her anxiety. Excluding individuals likely to be the subject of sensitive testimony serves to promote candor and honesty, and will allow Plaintiff S.K. to provide testimony on potentially sensitive topics uninhibited by any interpersonal awkwardness during the deposition.[2] Recognizing this

[1] "The capacity to sue is determined by the law of the individual's domicile." Order re Appointments of GALs, ECF No. 122. According to her GAL application, S.K. is domiciled in Colorado. *See* ECF. No. 252-2.

[2] Even if Rules 26 and 30 were not superseded by the Deposition Protocol in this case, the "particular and specific facts" Defendants have identified related to Plaintiff S.K. are sufficient to meet the standard for "good cause" under Rule 26(c). *Stowe v. Alford*, No. 2:19-cv-01652 KJM AC, 2021 U.S. Dist. LEXIS 98021, at *7-9 (E.D. Cal. May 24, 2021).

fact, the MDL and JCCP Plaintiffs previously sought to prevent Defendants from even showing the transcript to their parents after the deposition was over, a limitation that Judge Kuhl rejected.

Defendants do not object to attendance at depositions by parents or guardians who have their own loss of consortium claims,[3] provided that Plaintiffs disclose in advance of the deposition whether consortium Plaintiffs plan to attend so that Defendants can sequence the consortium Plaintiff's deposition to occur prior to other depositions in the case.[4] Of course, as the noticing party, Defendants are entitled to sequence depositions in the case as they see fit. *See* Fed. R. Civ. P. 26(d)(3)(A) ("methods of discovery may be used in any sequence"). Deposing the consortium Plaintiff first ensures that their testimony will be uninfluenced by the testimony of fact witnesses whose depositions proceed them. Yet, Plaintiffs have refused to disclose their intentions regarding attendance in *Mullen*, going so far as to reply to counsel, "Why should I tell you what order to go in? You need to give me something in return for me to agree to that." The Court should order Plaintiffs to do so within seven days.

Plaintiffs' Position: These issues come before the Court as the result of Defendants' unwillingness to work with minor and young adult personal injury bellwether Plaintiffs to accommodate reasonable requests regarding parental attendance at their depositions. Contrary to Defendants' assertion we are seeking to amend the Deposition Protocol wholesale, Plaintiffs seek only to take advantage of the provision allowing changes for certain depositions upon "agreement of the Parties without further order of the Court." ECF 742 at IV.1. Specifically, Defendants are refusing the requests of just one individual bellwether Plaintiff that she be permitted to have a parent attend her deposition to provide support—and have shut down overtures to even negotiate over this issue (going so far as to bluntly state, "we are not trading"). Defendants have taken this position notwithstanding that this Plaintiff's claims were filed when she was a minor, and only recently (in December) reached the age of majority. Instead, Defendants insist on briefing the issues of whether: (1) bellwethers who are aged 18 and over may request the presence of a parent (or guardian) during their depositions and (2) Plaintiffs must provide notice that a loss-of-consortium Plaintiff plans to attend a bellwether Plaintiff's deposition, thus allowing Defendants to re-sequence those depositions to allow the loss-of-consortium Plaintiff to be deposed first.

By way of background, in response to deposition dates offered for then-minor bellwether Plaintiff, S.K.,[5] Defendants responded that they "intend to depose Plaintiff[] S.K. [] after they turn 18," for the purpose of avoiding the time restrictions established in this case for depositions of minor Plaintiffs. In response, Plaintiffs raised concerns about improper gamesmanship, noting that

[3] Defendants' motion to dismiss Plaintiffs' loss of consortium claims remains pending. *See* ECF No. 516.

[4] Three Plaintiffs have consortium claims: Christine D'Orazio, Elizabeth Mullen, and Jessica Smith. Ms. D'Orazio's deposition is occurring today, and the loss of consortium plaintiff is not in attendance. Plaintiffs have also confirmed that the loss of consortium plaintiff in Ms. Smith's case will not be attending Ms. Smith's deposition.

[5] N.K., filed on behalf of minor S.K. v. Meta Platforms, Inc.; Instagram, Llc; Mark Elliot Zuckerberg; Bytedance Inc.; Bytedance Ltd.; Tiktok, Ltd.; Tiktok, Llc; and Tiktok, Inc., Case No. 4:22-md-03047-YGR (PHK).

the Plaintiff at issue is a high school student who works a part-time job and was applying to colleges, and that her parents work full time jobs. In the interest avoiding a dispute over scheduling, however, Plaintiffs eventually agreed that depositions could occur after S.K.'s 18th birthday. As part of these negotiations, Plaintiffs informed Defendants that that as a newly 18-year-old Plaintiff, she would request that a parent be allowed to attend her deposition.

After negotiations, Defendants proposed the following for bellwether depositions: (1) guardians *ad litem* for minor Plaintiffs may attend depositions; (2) loss of consortium Plaintiffs may attend depositions, provided that the loss of consortium Plaintiffs' depositions occur before the Plaintiffs' depositions, and Plaintiffs "promptly disclose the consortium Plaintiff's intention to attend," to allow the parties to re-sequence the depositions; and (3) apart from the foregoing, no other fact witnesses may attend a bellwether deposition absent agreement of the parties.

This proposal was entirely one-sided. With respect to item #1, Defendants gave up nothing, as there is no dispute that guardians *ad litem* are permitted to attend depositions by virtue of their appointments. With respect to item #2, parties (including loss of consortium Plaintiffs) are already permitted without limitation to attend depositions. *See* ECF 74 at § I.B.1. Defendants have been unable to cite any rule requiring loss of consortium Plaintiffs to provide notice weeks in advance of their intention to attend bellwether depositions—and Defendants' insistence that Plaintiffs stipulate to such a rule, without making any concessions in return, runs entirely counter to the kind of good faith negotiation Your Honor has repeatedly exhorted the parties to undertake. With respect to #3, Plaintiff's request that a newly 18-year-old Plaintiff be permitted to have a parent present for support is reasonable, and absent any legitimate basis for their refusal, Defendants position is inappropriate. Defendants refuse to accommodate this request, instead insisting on briefing these issues as to all bellwether Plaintiffs.

Two areas of dispute remain. ***First***, with respect to the single personal injury bellwether at issue, the Court should permit the presence of a parent at the deposition. Plaintiffs in this litigation suffer from various mental health conditions they assert were caused by the Defendants' social media products. The bellwether who has to date requested the presence of a parent at her deposition was a minor (16) at the time her case was filed, when she was selected as a bellwether, and when depositions commenced. She could have and should have been deposed prior to turning 18, and it is only through Defendants' gamesmanship that she was not. This Plaintiff has requested the presence of a parent as a supportive figure during what will certainly be a stressful experience. This is hardly surprising, considering this Plaintiff—despite having recently reached the age of majority—is a high school student, lives at home with her parents, and relies on her parents for support. There is no legitimate basis for Defendants' refusal of this accommodation, and it is more than reasonable in light of the circumstances and anticipated substance of these depositions. Moreover, Defendants will not be prejudiced by this reasonable accommodation.

The law supports Plaintiff's position. Federal Rule of Civil Procedure 30(c)(1) provides that the "examination and cross-examination of a deponent proceed as they would at trial under the Federal Rules of Evidence, except Rules 103 [rulings on evidence] and 615 [excluding witnesses]." The addition of this provision was meant to address "a recurring problem as to whether other potential deponents can attend a deposition." Fed. R. Civ. P. 30 Advisory Committee Notes (1993). The revision to the Rule provided that witnesses are not automatically excluded from a deposition, but instead, only when a party obtains a protective order under Rule 26(c)(1)(E).

Id. Under Rule 26, a party must show "good cause" to obtain a protective order. "The party seeking the protective order has the burden of showing that good cause exists by stating ***particular and specific facts***." *Stowe v. Alford*, No. 2:19-cv-01652 KJM AC, 2021 U.S. Dist. LEXIS 98021, at *7-9 (E.D. Cal. May 24, 2021) (emphasis added). "Broad allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not satisfy the Rule 26(c) test." *Id.* Defendants cannot make that showing here—nor have they attempted to do so during the conferral process.

Defendants instead—for the first time in this briefing—claim that barring the parents of S.K. from her deposition may "promote candor" because of nebulous "harms" conjured up on the basis of unidentified "records." This briefing is an inappropriate vehicle for Defendants to raise unsubstantiated claims about Plaintiff's family for the very first time. In any event, even if Defendants' claims were true, they would not satisfy the legal standard articulated above. Indeed, the notion that Plaintiff will be more candid and less fearful ***without*** a parent in the room is belied by the fact that Plaintiff ***is the one requesting her parent's presence***. Far from inhibiting Plaintiff's testimony, having a trusted adult in the room as she discusses deeply personal and difficult topics will only bolster Plaintiff's ability to withstand what is likely to be a wearying day.

There is no discernable threat of prejudice to Defendants as the result of a parent attending these depositions. Defendants hypothesize that parental attendance at a deposition may alter the testimony of bellwether Plaintiffs. Defendants have posited no credible basis for that assertion. Moreover, Defendants can't have it both ways—on the one hand, arguing that immediately upon a bellwether turning 18, she is an adult capable of withstanding a full day of deposition, but on the other, suggesting that she is so dependent on her parents that their mere presence will influence the substance of her sworn testimony. The crux of Defendants' argument is dependent upon a logical fallacy of false equivalency—namely that because bellwethers who have reached 18 can make legal decisions, vote, and serve in the military, they should be required to endure a full day of deposition without a parent present for support. Defendants' argument intentionally ignores the reality of this litigation, which involve allegations of serious mental health injuries, and the individual circumstances of the bellwether who has made this request. Further, Defendants' comparisons miss the mark, because while there presumably is no provision allowing for a parent to participate in voting, or serving in the military, by default, the Federal Rules permit attendance by other fact witnesses at deposition, absent a showing of good cause. Absent a protective order—which Defendants have not requested in any case—Plaintiffs should be permitted to have a supportive figure present at their depositions.

Second, the Court should intervene to require Defendants to comply with the previously agreed to deposition protocol with respect to loss of consortium Plaintiffs. Loss of consortium Plaintiffs are parties to their cases, a fact that Defendants do not dispute. After extensive negotiations, the parties previously agreed that parties may attend fact depositions. Stip. and Order Governing Protocol for Fact Deps. and Rule 30(b)(6)/PMQ Deps., § I.B.1 (ECF No. 742). There is no requirement that counsel notify opposing parties of a loss of consortium Plaintiff's intent to attend a deposition to permit the rescheduling of depositions. There is no greater risk that a parent-witness will learn about the substance of the questioning at the deposition in advance of their own depositions. In the scenario at issue here, Plaintiff's parents are represented by the same counsel as Plaintiff, and, as Defendants advocated for, there are no limitations on sharing the transcripts of Plaintiffs with parents in advance of their depositions. The Court should reject Defendants' attempt to relitigate this long-settled issue.